

**PLANNING COMMISSION
AGENDA
November 19, 2013 - 3:00 PM
Council Chambers - Rouss City Hall**

1. POINTS OF ORDER

- A. Roll Call
- B. Approval of Minutes - October 15, 2013 regular meeting
- C. Correspondence
- D. Citizen Comments
- E. Report of Frederick Co Planning Commission Liaison

2. PUBLIC HEARING

- A. **TA-13-493** AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT (**Mr. Grisdale**)

3. ADJOURN

TA-13-493 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT

REQUEST DESCRIPTION

This Zoning Ordinance text amendment was initiated by City Council as a publicly sponsored text amendment to revise the ordinance to allow for home occupations in accessory structures with a conditional use permit. Staff has received inquiries from citizens over the last several years regarding the ability to have a home occupation in their garage or similar detached accessory structure.

STAFF COMMENTS

Presently, the Zoning Ordinance provisions only permit a home occupation to be conducted in a dwelling unit in the main building on a property, with the exception of accessory garden uses. Staff recognizes that in today's economy there are greater numbers of individuals that are working from home or are looking to start a home business. This amendment would support this economic trend by allowing for a resident to request a conditional use permit (CUP) for a home occupation in an accessory structure by City Council.

In the slow economy over the past several years, citizens have been proactive in the utilization of the home occupation as a tool for self-employment and also as a starting point for growing a larger business before moving to a commercial location. In the years 2009-2012, the Zoning and Inspections department has approved on average 135 home occupations per year.

The intent to include the CUP requirement for these requests is due to the difference between main buildings and accessory structures regulations. Accessory structures, depending on the height, can be exempt from the setback provisions in a zoning district and may be located in greater proximity to a rear or side property line than main buildings. As a result there is a much higher likelihood of impacts on adjoining properties. By utilizing the conditional use permit review process, the Planning Commission and City Council can evaluate the potential impacts on neighboring properties and include conditions on the operation of the home occupation.

An application for a CUP for the home occupation would require the inclusion of the following:

- Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and the proximity of structures on adjoining properties.
- A scaled interior site sketch illustrating the proposed home occupation in the accessory structure.
- A letter outlining the scope and nature of the occupation, involving operating hours, days of the week and similar details.

Additionally, this proposed text amendment clarifies some of the types of home occupations which are not permitted. Presently there are only five explicitly prohibited home occupations, including animal hospitals, auto repair, dance instruction, restaurants and tourist homes. Staff is recommending removal of dance instruction from this list. Staff also recommends inclusion of a few additional uses in this list,

most of which are use requests made by citizens over the past several years: massage therapy, motor vehicle uses, and kennels and pet daycare.

A provision was included which clarifies the intent of the home occupation standards (Section 18-19-2.2). The language added clarifies that there should be no interruption, congestion or change to character of the neighborhood in terms of traffic or vehicular parking resulting from a home occupation.

RECOMMENDATION

Staff recommends approval. A potential motion could read:

MOVE that the Planning Commission forward **TA-13-493** with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for expanded opportunities for residents to conduct home occupations in accessory structures while providing for case by case review of potential impacts on neighboring properties.

AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE
WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY
STRUCTURES WITH A CONDITIONAL USE PERMIT

TA-13-493

Draft 2 – 11/5/13

*Ed. Note: The following text represents an excerpt of Articles 3, 4, 5, 5.1, 6, 7, 8, 9, 13 and 18 of the Zoning Ordinance that is subject to change. Words with strikethrough are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

ARTICLE 3

LOW DENSITY RESIDENTIAL DISTRICT – LR

SECTION 3-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

3-2-7 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 4

MEDIUM DENSITY RESIDENTIAL DISTRICT – MR

SECTION 4-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

4-2-11 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 5

HIGH DENSITY RESIDENTIAL DISTRICT - HR

SECTION 5-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5-2-19 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 5.1

LIMITED HIGH DENSITY RESIDENTIAL DISTRICT - HR-1

SECTION 5.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5.1-2-12 **Home occupations in accordance with Section 18-19-2.6.**

**ARTICLE 6
RESIDENTIAL OFFICE DISTRICT - RO-1**

SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

6-2-10 **Home occupations in accordance with Section 18-19-2.6.**

**ARTICLE 7
RESIDENTIAL BUSINESS DISTRICT - RB-1**

SECTION 7-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

7-2-24 **Home occupations in accordance with Section 18-19-2.6.**

**ARTICLE 8
HIGHWAY COMMERCIAL DISTRICT - B-2**

SECTION 8-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

8-2-27 **Home occupations in accordance with Section 18-19-2.6.**

**ARTICLE 9
CENTRAL BUSINESS DISTRICT - B-1**

SECTION 9-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

9-2-26 **Home occupations in accordance with Section 18-19-2.6.**

**ARTICLE 13
PLANNED DEVELOPMENT**

13-1-3.17 **USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

a. **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 18
GENERAL PROVISIONS

SECTION 18-19. HOME OCCUPATIONS. (10/11/83, Case 83-06, Ord. No. 034-83)

- 18-19-1 Home occupations are permitted in any dwelling unit.
- 18-19-2 A home occupation is an accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and/or service, including the sale of food and/or non-food crops produced on the site; and conducted in a dwelling unit **except as allowed in an accessory structure per the Conditional Use Permitting provisions identified in Section 18-19-2.6. Home Occupations shall only be engaged in** by a person or persons residing in the dwelling unit, provided that: (10/12/10, Case TA-10-418, Ord. No. 2010-51)
- 18-19-2.1 It is clearly incidental and subordinate to the dwelling unit's use for residential purposes by its occupants;
- 18-19-2.2 With the exception of an accessory garden use **and as provided in Section 18-19-2.6**, it is conducted in the main building and does not result in alteration of the appearance of the dwelling unit or the lot on which it is located. **There shall be no interruption, congestion or change to the character of the neighborhood in terms of traffic or vehicular parking resulting from the operation of the home occupation.** (10/12/10, Case TA-10-418, Ord. No. 2010-51);
- 18-19-2.3 With the exception of displaying food and/or non-food crops produced on the site, it is not identified by any sign or by a display of merchandise visible from the exterior of the building (10/12/10, Case TA-10-418, Ord. No. 2010-51);
- 18-19-2.4 It does not involve the storage of goods and materials in excess of fifty (50) square feet of floor area. This storage may be either in the main building or an accessory building, but it shall not be permitted outdoors.
- 18-19-2.5 No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.
- 18-19-2.6** **A conditional use permit shall be required for any home occupation that proposes to involve the use of an accessory structure as part of a home occupation. In addition to the provisions of this Section, home occupations must conform to the entirety of Section 18-19. In no case shall the floor area used in the accessory structure exceed fifty (50) percent of the gross floor areas of the residential dwelling unit. A conditional use permit application for home occupations under this Section shall include the following:**
- a. **Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and distances to each of the property lines as well as the distances to structures within 50 feet on immediately adjacent properties.**

- b. A scaled interior layout sketch illustrating the proposed home occupation in the accessory structure.
- c. A letter outlining the scope and nature of the occupation, involving operating hours, days of the week, and similar details, as well as an explanation of conformance with Section 18-2-1.1 of this Ordinance.

18-19-3 The operation of a family day home for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

18-19-4 Permitted home occupations shall not in any event include:

- Adult bookstores or adult motion picture theaters
- Animal hospitals and kennels
- ~~Auto repair~~
- ~~Dance instruction~~
- Bed and breakfast homestays and boarding houses
- Massage therapy (other than strictly a home office used for record keeping)
- Motor vehicle sales, repair, equipment installation, and similar activities
- Pet Daycare, training or grooming exceeding care of more than one (1) pet at a time, excluding those of the tenant of the dwelling unit
- Private Clubs or Lodges
- Restaurants
- Tourist Homes
- Vehicle towing, demolishing, or salvaging